

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

ADVANCED ARCHITECTURAL METALS, INC.

Employer-Petitioner

and

Case 28-UC-231

**UNITED BROTHERHOOD OF CARPENTERS,
LOCAL UNION #1780**

Union

DECISION AND ORDER

Advanced Architectural Metals, Inc. (the Employer-Petitioner) seeks by its petition in the above matter to clarify a unit of employees represented by United Brotherhood of Carpenters, Local Union #1780 (the Union) to include all production and maintenance work in the plant or plants of the Employer-Petitioner, including all construction work pursuant to the terms of the shop labor agreement between the Employer-Petitioner and the Union, but exclude all work covered by the master labor agreement between United Builders and Contractors Association, Inc. (the Association) and the Union effective from 2001 to 2004. As more fully set forth below, based on the record developed in a related unfair labor practice proceeding in Cases 28-CA-20730, 28-CA-20779, 28-CA-20885, and 28-CA-20918 (C case proceedings), and certain conclusions and findings of the Administrative Law Judge presiding over the C case proceedings, I find that since 1997, the Employer-Petitioner has recognized the Union as the Section 9(a) representative of its employees who perform both shop and field work in a single agreed-upon unit, and that in these circumstances the petition herein should be dismissed.

I. Procedural Background

On June 19, 2003, I deferred resolution of the issues raised by this petition to the parties' contractual grievance-arbitration procedure. On January 27, 2004, I dismissed this petition, finding that an arbitrator had found that upon the expiration of the shop agreement, the employees covered by that agreement were covered by the master labor agreement. On August 31, 2006, the Board issued a Decision on Review and Order Remanding, reported at 347 NLRB No. 111, in which it remanded the matter to me for reinstatement and processing of the Employer-Petitioner's petition and further appropriate action. According to the Board, the principal issue presented by the petition is whether the shop employees constitute a separate appropriate unit from employees outside the shop who are covered by the master labor agreement. On September 8, 2006, pursuant to the Board's Order, I issued a Notice of Hearing scheduling a hearing in this matter to commence on September 18, 2006. On September 12, 2006, the Employer-Petitioner requested that the hearing be postponed to October 19, 2006. On that same day, I withdrew the Notice of Hearing and ordered the matter postponed indefinitely.

On October 5, 2006, a representative for the Employer-Petitioner requested that a hearing be scheduled for October 26, 2006. Because a hearing was previously scheduled before an administrative law judge in the C case proceeding involving the same parties and related issues as to the parties' bargaining relationship, and because certain issues in the instant matter might be considered and resolved by the administrative law judge hearing the C cases, I issued an order on October 6, 2006, denying the request of the Employer-Petitioner to schedule the hearing and ordering the matter held in abeyance pending the resolution of the concurrent issues in the C case proceedings.

II. The Related Unfair Labor Practice Proceedings

A. The Complaint Allegations Related to the Appropriate Unit

The Second Consolidated Complaint in Cases 28-CA-20730, 28-CA-20779, 28-CA-20885, and 28-CA-20918 (the Complaint) alleged that the Union was the Section 9(a) representative of a unit of the Employer-Petitioner's employees which included both shop and installation employees. Specifically, paragraph 8(a) of the Complaint alleged that the Union represented a single unit of employees (the Unit) described as follows:

All employees performing production and maintenance work within the jurisdiction of the Union, including Shop Foreman, Journeyman Shop Worker, Shop Worker/Trainee and Laborer; and all employees performing field work and construction work outside the shop, excluding all other employees, guards, and supervisors as defined in the Act. ALJD(SF)-01-07, slip op. p. 22.

The complaint further alleged, at paragraph 8(c), that at all times since at least January 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit. In its answer filed on October 6, 2006, the Employer-Petitioner admitted, at Item 24, that the Employer-Petitioner:

...was a party to a collective bargaining agreement with the Contractors Union. The validity of this Agreement is still subject to hearings before the NLRB.

B. Evidence Adduced at C Case Hearing

On October 10, 2006, the hearing opened in Cases 28-CA-20730, 28-CA-20779, 28-CA-20885, and 28-CA-20918 before Administrative Law Judge Joseph Gontram (the ALJ). At the hearing, counsel for the General Counsel (CGC) presented testimony that the Union and the Employer-Petitioner signed a collective-bargaining agreement in 1997 for a single unit that included all field and shop employees (Tr. 19-20)¹ and that it was the intent of the parties to establish a single unit who would perform both shop

¹ Transcript references are shown as Tr. Followed by page numbers. GCX refers to General Counsel's exhibits.

and field work (Tr. 389). CGC introduced into evidence without objection from the representative of the Employer-Petitioner this collective-bargaining agreement effective May 30, 1997 to December 31, 1999 (GCX 2). CGC introduced into evidence subsequent collective-bargaining agreements (GCX 3-5), including the current collective-bargaining agreement effective March 1, 2004 to June 30, 2007 (GCX 6), which was also received into evidence without objection from the representative of the Employer-Petitioner. The hearing in these cases concluded on October 12, 2006.

Before presenting his sole witness on the last day of hearing, the representative of the Employer-Petitioner asked the ALJ if the hearing involved the instant petition. The ALJ advised that this was not the case. (Tr. 385-86) The representative of the Employer-Petitioner presented evidence concerning an alleged “Union relationship” with the Ironworkers Union. (Tr. 445-46) The Employer-Petitioner did not offer into evidence any collective-bargaining agreement involved in this “Union relationship.”

C. The Employer-Petitioner’s Requests Following the C Case Hearing

By letter dated October 20, 2006, I responded to the Employer-Petitioner’s representative’s October 16, 2006 request that I direct a hearing be conducted on this petition. In that letter, I stated:

This will acknowledge receipt of your letter dated October 16, 2006, requesting that I schedule a hearing on the petition in the above-captioned case. By a request dated the “5th day of 2006,” you sought to have a hearing in the above-captioned case scheduled for October 26, 2006. On October 6, 2006, I issued an order denying your request to schedule a hearing. I explained in that order that further proceedings in Case 28-UC-231 be held in abeyance pending resolution of the concurrent issues related to appropriate bargaining unit(s) in the Consolidated Complaint in Cases 28-CA-20730, 28-CA-20779, 28-CA-20885, and 28-CA-20918 which had been set for hearing before an administrative law judge. Thereafter, on October 9, 2006, you filed a Motion to Set Hearing Date and a Motion to Separate Case 28-UC-231 from

Cases 28-CA-20730, 28-CA-20779, 28-CA-20885, and 28-CA-20918 with a cover letter addressed to me and a copy to the Board. On October 13, 2006, you filed a Motion to Set Hearing Date with a cover letter addressed to me and a copy to the Board. It is unclear whether, by copying the Board with these motions and your October 16 letter, you have intended to appeal to the Board my earlier order dated October 6, 2006, denying your previous request to schedule a hearing.

My October 6, 2006 order provided that further proceedings on Case 28-UC-231 would be held in abeyance pending the decision in the above-mentioned CA cases by the Administrative Law Judge (the ALJ). In this regard, I am informed that there was evidence adduced at the hearing before the ALJ concerning the parties' collective-bargaining history and the applicability of the current collective-bargaining agreement to employees of the Employer. While the ALJ may not have authority to decide directly the issues presented in Case 28-UC-231, he may consider and make a factual determination of certain facts related to the appropriateness of the separate inside and outside bargaining units and whether they exist as a single contractual unit as he decides other issues in the CA cases. Such findings may assist me in administratively resolving the issues presented in Case 28-UC-231. If the ALJ does not reach the unit issue or if his findings do not assist me in resolving the issues remanded by the Board in the UC proceeding, I may schedule a hearing as you requested.

Until the ALJ issues his decision in the unfair labor practice cases, I must decline your requests by motion and letter to set or reconsider setting a hearing in Case 28-UC-231.

On October 31, 2006, the Employer-Petitioner filed with the Board a request for review and request for special permission to appeal my determination to hold the petition in abeyance pending the resolution of the outstanding unfair labor practices. By order dated December 6, 2006, the Board granted the Employer-Petitioner's request for special permission to appeal my determination, and denied the appeal on the merits.

D. The Administrative Law Judge's Findings and Conclusions

On January 26, 2007, the ALJ issued his decision in Cases 28-CA-20730, 28-CA-20779, 28-CA-20885, and 28-CA-20918 (ALJD(SF)-01-07). The ALJ found, among other things, that on May 30, 1997, the Employer-Petitioner signed a memorandum of agreement recognizing the Union as the exclusive bargaining representative of a unit of

carpenters, fabricators, machine operators, and laborers at the Employer-Petitioner's Las Vegas facility. This single bargaining unit consisted of both the fabrication or "shop" employees and the construction or "field" employees. Shortly after signing the agreement with the Union, the Employer-Petitioner became a signatory to the 1995–1998 master labor agreement (MLA), a multiemployer agreement with the Union. In 1997, the Employer-Petitioner and the Union also signed an agreement that became known as the "shop agreement." Under the shop agreement, shop employees and field employees received different wages and benefits—the shop employees were paid under the shop agreement and the field employees were paid under the MLA. Since 1997, the Employer-Petitioner and the Union have signed a series of collective-bargaining agreements, the most recent which is entitled "Shop Labor Addendum to Master Labor Agreement" effective from March 2004 to June 30, 2007.

The ALJ found that Employer-Petitioner created other entities, Advanced Metals, Inc. (AMI) and Steel Specialties Unlimited (SSU) "in order to circumvent the collective-bargaining agreement and relationship between [the Employer-Petitioner] and the Union." ALJD(SF)-01-07, slip op. p. 15. The ALJ found that AMI and SSU were alter egos of the Employer-Petitioner, and that, together, they constituted a single employer with:

...substantially identical management and supervision, business purpose, operations, equipment, customers, and ownership. Insofar as business purpose and operations are concerned, [the Employer-Petitioner] split the fabrication and installation functions of [the Employer-Petitioner] by transferring the fabrication responsibilities to AMI and the installation responsibilities to SSU. All three entities operate from the same facility, which is [the Employer-Petitioner's] facility, and therefore, use the same equipment. Indeed, there is no evidence that AMI or SSU ever purchased any equipment or ever used any equipment other than [the Employer-Petitioner's]. ALJD(SF)-01-07, slip op. p. 15.

Finding that the Employer-Petitioner had formed SSU on April 23, 2004, within one week of signing an agreement settling an employee strike, the ALJ concluded that the Employer-Petitioner formed SSU and transferred Employer-Petitioner's installation work to it "in order to circumvent the collective-bargaining agreement and relationship between [the Employer-Petitioner] and the Union." ALJD(SF)-01-07, slip op. p. 15.

When the Employer-Petitioner created AMI, the ALJ found that there was no change in the fabrication business conducted at the Employer-Petitioner's facilities, since AMI never purchased the fabrication portion of the Employer-Petitioner's business. When the Employer-Petitioner created SSU, the ALJ found that there was no change in the installation business that had been performed by the Employer-Petitioner's employees. The only change noted by the ALJ was a change in the employees' representative: in the case of AMI, there was no union, and, in the case of SSU, there was a different union, Ironworkers Local 433. The ALJ found that SSU's recognition of Ironworkers Local 433 as the representative of its employees violated Section 8(a)(1) and (2) of the Act. ALJD(SF)-01-07, slip op. p. 18. The ALJ ordered the Employer-Petitioner to withhold its recognition of Ironworkers Local 433 as the representative of the Employer-Petitioner's employees unless and until the Board certified Ironworkers Local 433 as the exclusive collective-bargaining representative of those employees. ALJD(SF)-01-07, slip op. p. 22.

Relying upon the intent of the parties to create a single collective-bargaining unit and having found that the efforts to avoid the Union and its collective-bargaining agreement in that single unit violated the Act, the ALJ concluded that, at all material times, the Union has been the designated exclusive collective bargaining representative of the

Employer-Petitioner's employees in the following appropriate bargaining unit within the meaning of Section 9(b) of the Act (the Union's bargaining unit):

All employees performing production and maintenance work within the jurisdiction of the Union, including Shop Foreman, Journeyman Shop Worker, Shop Worker/Trainee and Laborer; and all employees performing field work and construction work outside the shop, excluding all other employees, guards, and supervisors as defined in the Act. ALJD(SF)-01-07, slip op. p. 22.

III. Analysis and Determination

Based on the evidence adduced at the hearing in the C case proceedings before the ALJ and his findings and conclusions, I find that the Union was the Section 9(a) representative of a single unit of the Employer-Petitioner's employees who performed both inside shop work and outside installation work. While the current collective-bargaining agreement between the parties recites that it is the shop labor addendum to the MLA, it is this agreement that controls and establishes the single unit of employees and reflects the longstanding intent of the parties to create a single unit of employees performing both shop work and outside installation work. The agreement recites that the Union is the Section 9(a) representative of the Employer-Petitioner's employees and has enjoyed such status since 1997. (GCX 6, p. 3) Even if the Union failed to demonstrate its majority status, as recited in the agreement, it is clear that the Employer-Petitioner recognized the Union as the Section 9(a) representative of its employees in 2004, well beyond the six-month statute of limitations period established by Section 10(b) of the Act. Section 10(b) provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board" As explained by the Supreme Court in *Machinists Local 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411, 419 (1960), "these policies are to bar litigation over 'past events after records have been destroyed, witnesses have gone elsewhere,

and recollections of the events in question have become dim and confused,' H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 40, and of course to stabilize existing bargaining relationships.”

The Employer-Petitioner had the opportunity to litigate this unit issue at the hearing before the ALJ, having been put on notice by the Complaint allegations of a single unit of employees and recognition of that unit by the Employer-Petitioner pursuant to Section 9(a) of the Act. Further, the Employer-Petitioner was put on notice by my October 6, 2006 order and my October 20, 2006 letter that I was holding the instant petition in abeyance, pending the resolution of the concurrent and related issues in the C case proceedings. Indeed, it would appear that a defense to the Section 8(a)(2) finding by the ALJ would be evidence that the outside employees constituted a separate appropriate unit of employees represented by the Ironworkers Union. Instead, the Employer-Petitioner offered testimony limited to the existence of a “Union relationship” with the Ironworkers Union and failed to provide the collective-bargaining agreement with the Ironworkers or other evidence showing the existence of a separate appropriate bargaining unit. The ALJ found that the employees of the Employer-Petitioner constituted a single unit of employees that the Employer-Petitioner and its alter egos, AMI and SSU, used as they saw fit in an effort to avoid the Employer-Petitioner’s relationship with the Union and its collective-bargaining agreement with that Union.

This petition was not consolidated for hearing with the hearing in C case proceeding, and the ALJ, responding to the representative for the Employer-Petitioner, stated that he was not hearing or deciding the instant unit clarification. Nonetheless, the record developed before the ALJ, as well as the ALJ’s findings of facts and conclusions of law, demonstrate that the Union represents a single unit of employees who perform both shop and

field work and that at all times since at least 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of these employees. In these circumstances, I find that further proceedings on this petition are not warranted, and I shall dismiss the petition in this matter.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and the same hereby is, dismissed.

RIGHT TO REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. The Board in Washington must receive this request by May 7, 2007. A copy of the request for review should also be served on the undersigned. The request may not be filed by facsimile.²

Dated at Phoenix, Arizona, this 23rd day of April 2007.

/s/Cornele A. Overstreet
Cornele A. Overstreet, Regional Director
National Labor Relations Board

² In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.